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APPLICATION OF

CPV CUNNINGHAM CREEK LLC

CASE NO. PUE-2001-00477

For approval of electrical generating facilities pursuant to Va. Code § 56-580 (D), for waiver of certain filing requirements, for confidential treatment of certain information, and for a certificate of public convenience and necessity pursuant to § 56-265.2, for an exemption from Chapter 10 of Title 56, and for interim authority to make financial expenditures

HEARING EXAMINER'S RULING

May 17, 2002

On May 7, 2002, CPV Cunningham Creek, LLC filed a motion to reopen the record in the captioned proceeding for the limited purpose of submitting supplemental rebuttal testimony prepared by Chris Broemmelsiek. The additional testimony addresses the specific issue of CPV Cunningham Creek's intent to construct and operate its proposed electric generating facility in Fluvanna County, Virginia. At the hearing convened April 23 – 24, 2002, several public witnesses testified that CPV Cunningham Creek had no intention of constructing and operating the proposed project. Subsequent to that hearing, the Commission issued an order remanding another case to the hearing examiner for further proceedings because, among other things, the developer in that case had expressed its intent to defer the construction of its proposed facility while it negotiated with other entities to take over the development of the project.¹ The additional testimony is offered in this case because the applicant wants this record to be absolutely clear on its intent and to explain how this project is different from the recently remanded case.

Staff has advised that it has no objection to the motion, and further, that it has no desire to cross-examine Mr. Broemmelsiek on the supplemental testimony.

Upon consideration of the motion, and without objection thereto, I find that the motion to supplement the record should be granted. Accordingly,

IT IS DIRECTED:

- (1) That the motion to reopen the record is GRANTED; and

¹ *Application of Mirant Danville LLC*, Case No. PUE-2001-00430, Remand Order issued April 29, 2002.

(2) The supplemental testimony of Chris Broemmelsiek filed on May 7, 2002, is accepted into the record as Exhibit 36.

Deborah V. Ellenberg
Chief Hearing Examiner